

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE:

AIR CRASH AT SAN FRANCISCO,  
CALIFORNIA, ON JULY 6, 2013

MDL No.: 2497

ORDER SETTING INITIAL CONFERENCE,  
DENYING MOTION TO STAY, SETTING  
BRIEFING ON MOTION TO REMAND

THIS DOCUMENT RELATES TO:  
ALL CASES

*Preamble.* The Court wishes to express clearly its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. The Manual for Complex Litigation, Fourth at section 10.21 captures the spirit in these terms:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the Court is confident that this objective will be achieved without judicial intervention.

The Court **HEREBY ORDERS**:

**1. Initial Conference.** All parties shall appear for a conference with the undersigned on **April 11, 2014 at 10:00 a.m.** in Courtroom 1, United States Courthouse, Ronald V. Dellums Federal Building, 1301 Clay Street, Oakland, California.

*a. Attendance.* To minimize costs and facilitate a manageable conference, parties are not required to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A

1 party will not, by designating an attorney to represent its interests at the conference, be  
2 precluded from other representation during the litigation; and attendance at the conference will  
3 not waive objections to jurisdiction, venue, or service.

4 *b. Other Participants.* Persons who are not named as parties in this litigation but  
5 may later be joined as parties or are parties in related litigation pending in other federal and  
6 state courts are invited to attend in person or by counsel.

7 *c. List of Counsel Intending to Appear:* To assist the Court with managing attorney  
8 appearances, counsel for all parties should confer and file a joint list of counsel who will appear  
9 at the case management conference no later than Monday, April 7, 2014. *See In re Lithium Ion*  
10 *Batteries Antitrust Litigation*, MDL No. 2420, Dkt. No. 130 (Joint List of Counsel Appearing at  
11 the April 3, 2013 Case Management Conference).

12 **2. Purposes and Agenda.** The conference will be held for the purposes specified in  
13 Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f) and subject to the sanctions prescribed in Rule 16(f).  
14 More particularly, for this initial conference, a tentative agenda is appended as Attachment A. The  
15 Court anticipates additional conferences will be required to address additional issues such as those  
16 appended as Attachment B. However, the Court will entertain counsel's requests to address other  
17 items not specifically on Attachment A. Any such requests must be filed by April 1, 2014.

18 **3. Preparations for Conference.**

19 *a. Procedures for Complex Litigation.* Counsel are expected to familiarize  
20 themselves with the Manual for Complex Litigation, Fourth and be prepared at the conference  
21 to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this  
22 litigation.

23 *b. Initial Conference of Counsel.* Before the conference, counsel shall confer and  
24 seek consensus to the extent possible with respect to the items on the agenda, including a  
25 proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for  
26 joinder of parties, amendment of pleadings, consideration of any class action allegations,  
27 motions, and trial.

1           c.     Joint Preliminary Statement. Counsel shall submit to the Court by April 1, 2014,  
2 a preliminary statement. Plaintiffs and Defendants shall each be limited to one such submission  
3 per side. The statement shall include:

- 4                     i. Each group's preliminary understanding of the facts involved in the  
5                     litigation and the critical factual and legal issues;  
6                     ii. A list of all pending motions;  
7                     iii. A list of all related cases pending in state or federal court and their  
8                     current status, to the extent known; and  
9                     iv. A proposed schedule.

10           d.     List of Affiliated Companies and Counsel. To assist the Court in identifying any  
11 problems of recusal or disqualification, counsel will submit to the Court by April 1, 2014, a list  
12 of all companies affiliated with the parties and all counsel associated in the litigation.

13           **4.     Interim Measures.** Until otherwise ordered by the court:

14           a.     Admission of Counsel. Attorneys admitted to practice and in good standing in  
15 any United States District Court are admitted *pro hac vice* in this litigation. Association of  
16 local co-counsel is not required.

17           b.     Pleadings. Each defendant is granted an extension of time for responding by  
18 motion or answer to the complaint(s) until a date to be set at the initial conference.

19           c.     Pending and New Discovery. Pending the conference, all outstanding disclosure  
20 and discovery proceedings are stayed and no further discovery shall be initiated. This order  
21 does not (1) preclude voluntary informal discovery regarding the identification and location of  
22 relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a  
23 deposition that has already been scheduled; (3) prevent a party from voluntarily making  
24 disclosures, responding to an outstanding discovery request under Federal Rule of Civil  
25 Procedure 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information  
26 needed to respond to a request under Rule 33, 34, or 36. Relief from this stay may be granted  
27 for good cause shown, such as the ill health of a proposed deponent.

1           d.     Preservation of Records. All parties and their counsel are reminded of their duty  
2 to preserve evidence that may be relevant to this action. The duty extends to documents, data,  
3 and tangible things in the possession, custody and control of the parties to this action, and any  
4 employees, agents, contractors, carriers, bailees, or other nonparties who possess materials  
5 reasonably anticipated to be subject to discovery in this action. “Documents, data, and tangible  
6 things” shall be interpreted broadly to include writings, records, files, correspondence, reports,  
7 memoranda, calendars, diaries, minutes, electronic messages, voice mail, E-mail, telephone  
8 message records or logs, computer and network activity logs, hard drives, backup data,  
9 removable computer storage media such as tapes, discs and cards, printouts, document image  
10 files, Web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices,  
11 bills, vouchers, checks statements, worksheets, summaries, compilations, computations, charts,  
12 diagrams, graphic presentations, drawings, films, charts, digital or chemical process  
13 photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts,  
14 jottings and notes, studies or drafts of studies or other similar such material. Information that  
15 serves to identify, locate, or link such material, such as file inventories, file folders, indices, and  
16 metadata, is also included in this definition. Until the parties reach an agreement on a  
17 preservation plan or the Court orders otherwise, each party shall take reasonable steps to  
18 preserve all documents, data and tangible things containing information potentially relevant to  
19 the subject matter of this litigation. Counsel is under an obligation to the Court to exercise all  
20 reasonable efforts to identify and notify parties and non-parties, including employees of  
21 corporate or institutional parties.

22           e.     Motions. No motion shall be filed under Rule 11, 12, or 56 without leave of court  
23 and unless it includes a certificate that the movant has conferred with opposing counsel in a  
24 good-faith effort to resolve the matter without court action.

25           f.     Orders of Transferor Courts. All orders by transferor courts imposing dates for  
26 pleading or discovery are vacated.

27           5.     ***Later Filed Cases.*** This order shall also apply to related cases later filed in,  
28 removed to, or transferred to this Court.

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**EXHIBIT A**  
**TENTATIVE AGENDA FOR INITIAL CONFERENCE**

The primary objective of the initial conference is to develop an initial plan for the “just, speedy, and inexpensive determination” of the litigation. This plan will include procedures for identifying and resolving disputed issues of law, identifying and narrowing disputed issues of fact, carrying out disclosure and conducting discovery efficiently and economically, and preparing for trial in the absence of settlement or summary disposition. The following should help in the development of the case management plan:

- identifying and narrowing issues of fact and law;
- establishing deadlines and limits on joinder of parties and amended or additional pleadings;
- coordinating with related litigation in federal and state courts, including later filings, removals, or transfers, as well as relating all cases for which there is an outstanding motion to relate;
- effecting early resolution of jurisdictional issues;
- referring, if possible, discovery matters to magistrate judges;
- appointing liaison, lead, and trial counsel and special committees, and maintaining time and expense records by counsel;
- reducing filing and service requirements through a master file and orders under Federal Rule of Civil Procedure 5;
- exempting parties from or modifying local rules or standing orders;
- creating schedules and deadlines for various pretrial phases of the case and setting a tentative or firm trial date;
- discussing any unresolved issues of recusal or disqualification;
- evaluating prospects for settlement or possible referral to mediation or other procedures; and
- instituting any other special procedures to facilitate management of the litigation.

**EXHIBIT B**  
**AGENDA ITEMS FOR FUTURE CONFERENCES**

- planning for prompt determination of class action questions, including a schedule for discovery and briefing on class issues;
- managing disclosure and discovery;
- setting guidelines and schedules for the disclosure and exchange of digital evidentiary exhibits and illustrative aids;
- establishing procedures for managing expert testimony; and
- setting firm trial date(s).